

1 BRANCART & BRANCART  
2 Christopher Brancart (SBN 128475)  
3 Liza Cristol-Deman (SBN 190516)  
4 Post Office Box 686  
5 Pescadero, CA 94060  
Tel: (650) 879-0141  
Fax: (650) 879-1103  
cbrancart@brancart.com  
lcristoldeman@brancart.com

## 6 || Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

10           **GREATERT NAPA FAIR HOUSING**  
11           **CENTER**, a California Not for Profit  
12           Corporation, doing business as  
13           **FAIR HOUSING NAPA VALLEY**, as  
14           an individual entity only; **RUBY**  
15           **DUNCAN**, an incompetent adult, by  
16           and through her Guardian Ad Litem,  
17           **M. LOUISE WHITAKER**; and **EVA**  
18           **NORTHERN**, an incompetent adult,  
19           by and through her Guardian ad  
20           Litem, **NANCY NORTHERN**,  
21           each individually and on behalf of  
22           individuals similarly situated;  
23           **NANCY NORTHERN**, in her  
24           individual capacity only; and **M.**  
25           **LOUISE WHITAKER**, in her  
26           individual capacity only.

19 Plaintiffs,

20 || vs.

**HARVEST REDWOOD  
RETIREMENT RESIDENCE, L.L.C.,  
doing business as Redwood  
Retirement Residence; REDWOOD  
RETIREMENT RESIDENCE L.L.C.;  
and HOLIDAY RETIREMENT CORP.**

## **Defendants.**

Case No. C07-3652 MEJ

**NOTICE OF MOTION AND MOTION  
FOR ISSUANCE OF PRELIMINARY  
INJUNCTION; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF PLAINTIFFS' MOTION**

## **HEARING:**

**HEARING:** Date: September 6, 2007

Date: September

Place: 450 Golden Gate Ave.,  
Courtroom B, 15<sup>th</sup> Floor

**NOTICE OF MOTION AND MOTION FOR ISSUANCE OF PRELIMINARY INJUNCTION;  
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION;  
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**NOTICE OF MOTION AND MOTION FOR ISSUANCE OF  
PRELIMINARY INJUNCTION**

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on September 6, 2007, at 10:00 a.m. or as soon thereafter as counsel may be heard, in Courtroom B, 15<sup>th</sup> floor, United States District Court, Northern District of California, located at 450 Golden Gate Avenue, San Francisco, CA, the named plaintiffs in this action, through their attorneys of record herein, will move the Court, pursuant to Rule 65 of the Federal Rules of Civil Procedure and Rules 65-2 and 7-2 of the Local Civil Rules, for an order issuing a preliminary injunction immediately enjoining the defendants and their successors, agents, officers, servants, employees, attorneys and representatives and all persons acting in concert or participating with them by:

(A) requiring defendants to formally withdraw any pending eviction notices against class members who have disabilities, or who are perceived as having disabilities, or who have a record of having a disability;

(B) requiring that defendants eliminate any written or oral policies requiring that Redwood residents be able to maintain an “active” lifestyle or be “independent” and any other written or oral policies limiting tenancy or any program at Redwood Retirement Residence, L.L.C. (Redwood) based on residents’ disabilities:

(C) requiring that defendants eliminate the “meal tray” policy and any other charges or penalties that Redwood applies to residents with disabilities who use the services of caregivers; and

(D) requiring defendants to refrain from making any discriminatory statements relating to the disabilities of residents or prospective residents.

This motion will be made on the ground that immediate and irreparable injury will result to plaintiffs unless the activities described above are enjoined pending trial of this action. It will be based on the declarations, exhibits, and memorandum of points and

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1 authorities filed concurrently herewith, and upon such oral and written argument as may  
2 be presented at the hearing on this motion.  
3

4 Dated: August 2, 2007.

5 Respectfully submitted,  
6

7 BRANCART & BRANCART  
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9 Liza Cristol-Deman  
10 Attorneys for Plaintiffs  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Redwood Retirement Residence (“Redwood”) is an upscale apartment building in Napa, California for seniors aged 55 years or older. Redwood also offers special services for its tenants, including an on site dining facility, housekeeping services, and social activities. Since October 2006, defendants, who own and manage Redwood, have engaged in a campaign with the purpose or effect of getting rid of tenants whose physical and cognitive disabilities do not comport with Redwood’s discriminatory policy of limiting tenancy to “active and independent seniors.” Redwood residents with disabilities live in an environment filled with fear and open hostility from the management. Those without disabilities worry that a single medical problem could lead to eviction or other consequences.

Defendants’ written and oral statements in marketing brochures and to residents and their families leave no doubt that defendants wish to rent only to “active” and “independent” seniors, not seniors with disabilities. Defendants’ have implemented this policy at Redwood by :

- Evicting numerous residents based solely on their status as persons with disabilities;
- Informing other residents or their family members that they will be asked to move out sooner or later because of their disabilities;
- Ordering tenants to pay extra fees if they cannot eat in the communal dining room and need their own, privately-paid health care aides to bring meal trays from the communal dining hall to their apartments, even though meals are included in the rent;
- Creating a hostile environment for people with disabilities at Redwood.

For many of the residents at Redwood who are at or near 100 years of age and have serious mobility limitations, the continued prospect of living in this kind of environment or being forced to move out of their apartments will be devastating to their physical and

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1 emotional health.

2 Plaintiffs, therefore, move for a preliminary injunction, pursuant to Rule 65,  
 3 Federal Rules of Civil Procedure, to require Defendants to cease their discriminatory  
 4 policies, evictions, and harassment of Redwood Residents with disabilities and their  
 5 families. Specifically, this Court shall enjoin defendants by:

6 (A) requiring defendants to formally withdraw any pending eviction notices  
 7 against class members who have disabilities, or who are perceived as having  
 8 disabilities, or who have a record of having a disability;

9 (B) requiring that defendants eliminate any written or oral policies requiring that  
 10 Redwood residents be able to maintain an "active" lifestyle or be "independent" and any  
 11 other written or oral policies limiting tenancy or any program at Redwood based on  
 12 residents' disabilities;

13 (C) requiring that defendants eliminate the "meal tray" policy and any other  
 14 charges or penalties that Redwood applies to residents with disabilities who use the  
 15 services of private care givers; and

16 (D) requiring defendants to refrain from making any discriminatory statements  
 17 relating to the disabilities of residents or prospective residents.

## 18 II. **STATEMENT OF FACTS**

### 19 A. PROCEDURAL BACKGROUND.

20 This class action was filed on July 16, 2007. (Document 1.) Defendants were  
 21 served with the summons and complaint on July 19, 2007 (Documents 7-8), but have  
 22 not yet filed a responsive pleading or made an appearance. The initial case  
 23 management conference is scheduled for October 25, 2007. (Document 2.)

24 The facts alleged in plaintiffs' complaint, which are supported by declarations  
 25 accompanying this motion, demonstrate that defendants' practices and policies  
 26 discriminate against people with disabilities in violation of the Fair Housing Act and  
 27 related state laws. Defendants' discriminatory practices and policies include:

28 • Evicting residents with disabilities or otherwise making housing

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1                   unavailable to people with disabilities;

2       • Requiring all residents to satisfy "active" or "Independent Living"

3                   requirements;

4       • Charging extra fees for residents who cannot eat in the communal dining

5                   room although those residents pose no extra burden or cost on

6                   defendants;

7       • Making statements indicating a preference, limitation or discrimination

8                   against people with disabilities;

9       • Refusing to make reasonable accommodations rules and policies on

10                  behalf of residents with disabilities;

11       • Questioning and examining residents regarding their disabilities.

12                  **B. PLAINTIFFS' CLAIMS.**

13                  Plaintiffs Eva Northern and Louise Whitaker, as the successor in interest to Ruby

14                  Duncan, seek to represent a class of past, present and future residents of Redwood

15                  Retirement Residence, all of whom have been or are likely to be injured by defendants'

16                  discriminatory practices and policies. Fair Housing of Napa Valley also has suffered

17                  damages and will continue to suffer as a result of the discrimination.

18                  1. **Plaintiffs Eva Northern and Nancy Northern.**

19                  Plaintiff and putative class representative Eva Northern is a former resident of

20                  Redwood Retirement Residence. Ms. Northern is 87 years old. (Declaration of Nancy

21                  Northern, filed concurrently herewith ["Northern Dec."], ¶ 3.) She was a resident of

22                  apartment 112 at Redwood from approximately March 1, 2001 until March 15, 2007.

23                  (Northern Dec. ¶¶ 5, 18.) She is substantially impaired in one or more of her major life

24                  activities, including the ability to communicate, due to dementia and a previous stroke.

25                  (Northern Dec. ¶ 6.) Thus, she qualifies as a person with a disability or handicap within

26                  the meaning of the federal Fair Housing Act and the California Fair Employment and

27                  Housing Act. She seeks to represent the class of persons who has resided or will

28                  reside at Redwood at any time between October 2006 and the present.

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1           In or about January 2001, Eva Northern signed a rental agreement for apartment  
 2 112 at the Redwood Retirement Residence. The monthly rent included three meals a  
 3 day, light housekeeping, social programs for the residents, and a variety of other  
 4 amenities. (Northern Dec. ¶ 5.)

5           Soon after Eva Northern moved into Redwood Retirement Residence, her  
 6 daughter, Nancy Northern, hired home health care aides from a private agency run by  
 7 Priscilla Valencia to assist her mother with daily activities such as taking medications  
 8 and getting dressed. A home health care aide assisted Eva Northern for several hours  
 9 each day throughout her tenancy at Redwood. Eva and Nancy Northern paid the home  
 10 health care aides directly for their services. (Northern Dec. ¶ 7.)

11          Eva Northern's medical and cognitive impairments made it difficult and  
 12 uncomfortable to eat in the communal dining room at Redwood. For most meals, her  
 13 home health care aide went to the Redwood kitchen at meal times to pick up meal  
 14 trays. She would then bring the meal trays to Ms. Northern to eat in her apartment.  
 15 (Northern Dec. ¶ 8.)

16          In or about the fall of 2006, Redwood management distributed a notice to  
 17 residents regarding a new meal tray policy (hereafter, "Meal Tray Policy"). (Northern  
 18 Dec. ¶ 9.) Several copies of the notice regarding the meal tray policy were first left in  
 19 the lobby area. Later, copies were distributed to residents. The notice stated, in  
 20 pertinent part,

21          With few exceptions, meal trays will be permitted only for residents who  
 22 are temporarily ill or who are rehabilitating and cannot come to the dining  
 23 room due their short-term condition where full or near full recovery is  
 24 existed.

25          ...

26          If the temporary illness or rehabilitation lasts longer than 3 days, the  
 27 Redwood will charge the resident a \$10.00 per day meal tray preparation  
 28 fee commencing on the 4<sup>th</sup> day trays are being delivered to the resident.

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1 The same notice also stated, "please keep in mind that the Redwood is a retirement  
 2 community designed for active and independent seniors." A true and correct copy of  
 3 the Redwood Meal Tray Policy is attached to the declaration of Nancy Northern as  
 4 Exhibit 6.

5 After she first learned of the Meal Tray Policy, Nancy Northern contacted the  
 6 managers at Redwood to complain. In the following months, and until December 31,  
 7 2006, Eva Northern's home health care aide continued to pick up meals for Eva  
 8 Northern. Redwood did not send any bills to Eva or Nancy Northern or otherwise  
 9 attempt to collect any fees for the meal trays during this period. (Northern Dec. ¶ 10.)

10 That changed on December 31, 2006. On the morning of New Years' Eve 2006,  
 11 Redwood staff informed Eva Northern's home health care aide that she could no longer  
 12 pick up any meal trays for Eva Northern. Redwood staff refused to provide a breakfast  
 13 tray. That decision jeopardized Eva Northern's health, because she has diabetes and  
 14 must eat regularly to prevent her blood sugar from dropping dangerously low. Eva  
 15 Northern's aide found a holiday gift basket in the lobby and took some fruit for Eva  
 16 Northern to eat. She then called Nancy Northern to report what had happened.  
 17 (Northern Dec. ¶ 11.)

18 Nancy Northern then drove to Redwood. She met with the managers and  
 19 explained to them that it was uncomfortable for Eva Northern to eat in the dining room  
 20 because of her communication impairments. She reminded them that her mother had  
 21 eaten her meals in her room since she moved in without any problems. The managers  
 22 agreed to permit the home health care aides to pick up additional food trays for a fee of  
 23 \$5.00 per tray.<sup>1</sup> Nancy Northern reluctantly agreed to pay the charges because the  
 24 managers stated that her mother's meal trays would be discontinued if she did not

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25  
 26  
 27 <sup>1</sup>Redwood's Meal Tray Policy notice initially stated a cost of \$10 for meal trays.  
 28 See Exh. 12 to the Whitaker Dec. Redwood also issued a notice stating a cost of \$5  
 per tray. See Exh. 6 to the Northern Dec. The notices are otherwise identical. It is  
 unclear which notice is current and how much Redwood is currently charging.

1 agree to pay. She reiterated to the resident managers that she disagreed with the meal  
 2 tray policy. The resident managers stated that implementing the meal tray policy was  
 3 not their decision. (Northern Dec. ¶ 12.)

4         Three days later, on January 3, 2007, Nancy Northern received a phone call  
 5 from Tom Ahrens, who identified himself as a regional manager for Holiday Retirement  
 6 Company. Ms. Northern described the reasons that her mother ate her meals in her  
 7 room, including her medical conditions and cognitive impairment. Mr. Ahrens stated  
 8 that Redwood is an "independent living facility," and that people who cannot eat their  
 9 meals in the dining room "do not belong at Redwood," or words to that effect. Mr.  
 10 Ahrens stated that Redwood was "not intended" for people who could not make it to the  
 11 dining room. Mr. Ahrens stated that he would permit Eva Northern to continue to  
 12 receive meal trays in her room free of extra charges until January 8, 2007, but no  
 13 longer. (Northern Dec. ¶ 13.)

14         As a result of the discriminatory Meal Tray Policy, Nancy Northern purchased a  
 15 small freezer and placed it in Eva Northern's room to store pre-cooked meals to be  
 16 reheated and served to Eva Northern. For three months, Eva Northern did not take any  
 17 meals from Redwood, even though three meals per day were included in the rent;  
 18 instead, Nancy Northern purchased or made food for her mother, which was reheated  
 19 and served by the home health care aids. Redwood did not reduce the rent or refund  
 20 any money for the missed meals. (Northern Dec. ¶ 14.)

21         Nancy Northern was upset about the discriminatory fees and the extra measures  
 22 she had to take to ensure that her mother received food. (Northern Dec. ¶ 14.) At the  
 23 same time, she knew that Redwood had asked a number of residents to move out  
 24 because they required assistance and could not live independently. (Declaration of  
 25 Priscilla Valencia, filed concurrently herewith, ["Valencia Decl."], ¶ 7; Northern Dec. ¶  
 26 15.) She worried that her mother would be asked to move out next. As a result of all  
 27 of the changes at Redwood – the new Meal Tray Policy, 30-day eviction notices for  
 28 those who could not live without help, and Mr. Ahrens' comments indicating that people

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1 with disabilities were not welcome at Redwood – she felt she had no choice but to find  
 2 a new residence for her mother. (Northern Dec. ¶ 15.)

3       Eva Northern vehemently opposed moving and became very depressed and  
 4 anxious. She was prescribed medication for depression and anxiety. She moved out  
 5 of Redwood to Aegis, an assisted living facility, on or about March 15, 2007. She cried  
 6 and did not want to get into the car to leave Redwood. She initially refused to get out of  
 7 the car when she arrived at her new residence. (Northern Dec. ¶ 18.)

8       The monthly cost of Aegis far exceeded the cost of Redwood, even when the  
 9 cost of the private health care aide at Redwood is included. (Northern Dec. ¶ 16.)

10      After she moved to Aegis, Eva Northern's mental condition rapidly declined.  
 11 While living at Redwood, she became confused and disoriented only occasionally. In  
 12 contrast, after she moved, she was constantly confused and disorientated. (Northern  
 13 Dec. ¶ 19.) She continued to cry frequently about her move from Redwood. She  
 14 expressed a desire to end her life in June 2007 while hospitalized for an infection.  
 15 (Northern Dec. ¶ 20.) Nancy Northern believes that the stress of the discriminatory  
 16 policies at Redwood and the ensuing move hastened her mother's mental and physical  
 17 decline. (Northern Dec. ¶ 21.)

## 18           2. Plaintiffs Ruby Duncan and Mae Louise Whitaker.

19      Ruby Duncan was a resident of Redwood Retirement Residence from May 1991  
 20 to June 2002 and again from Summer 2003 until July 11, 2007, when she passed  
 21 away.<sup>2</sup> (Declaration of Mae Louise Whitaker, filed concurrently herewith ["Whitaker  
 22 Dec."], ¶¶ 5-6.) Ms. Duncan was 100 years old when she died. (Whitaker Dec. ¶ 4.)  
 23 Her daughter, Mae Louise Whitaker, is her successor in interest, as well as a plaintiff in  
 24 this matter.

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25  
 26      <sup>2</sup>Plaintiffs' counsel did not learn of her death until after the complaint – which  
 27 named Ms. Duncan as a plaintiff – was prepared. Plaintiffs will file a substitution  
 28 naming Ms. Whitaker as Ms. Duncan's successor in interest. (Declaration of Liza  
 Cristol-Deman, filed concurrently herewith, ["Cristol-Deman Dec."] ¶ 2.)

1           Ms. Duncan had difficulty walking and hearing loss. She also had been  
 2 diagnosed with dementia, making it difficult for her to communicate and concentrate.  
 3 (Whitaker Dec. ¶ 4.) She was substantially impaired in more than one life activity, and  
 4 as such, qualifies as a person with a disability under the Fair Housing Act and FEHA.

5           Ms. Duncan hired a private, home health care aide from Ms. Valencia's agency  
 6 starting in approximately June 2003. Ms. Duncan and Ms. Whitaker paid the home  
 7 health care aide directly for her services. The home health care aide assisted Ms.  
 8 Duncan with daily activities such as taking medications and ambulating. Frequently,  
 9 Ms. Duncan did not feel well enough to dress and leave her apartment because of her  
 10 health and the effects of age. The home health care aide picked up meal trays for Ms.  
 11 Duncan from the Redwood kitchen so that Ms. Duncan could eat in her apartment  
 12 instead of going to the communal dining room. (Whitaker Dec. ¶ 8.)

13          In late 2006, Ms. Whitaker learned of the new Redwood Meal Tray Policy. The  
 14 new meal tray policy indicated that the management would assess extra charges for in-  
 15 home meal service with very limited exceptions. The limited exceptions – short term  
 16 illness such as the flu, or short term recuperation from injury or illness with full recovery  
 17 expected – did not cover Ms. Duncan's situation. (Whitaker Dec. ¶ 10.)

18          At around the same time that she became aware of the Meal Tray Policy, other  
 19 Redwood residents told Ms. Whitaker that Redwood had ordered some residents to  
 20 move out if they could no longer use the communal dining room or did not otherwise fit  
 21 within the definition of an "active, independent" senior. (Whitaker Dec. ¶ 13.)

22          In December 2006, Ms. Whitaker contacted the managers of the Redwood and  
 23 asked about the Meal Tray Policy. One of the resident managers, Denise Hall,  
 24 informed Ms. Whitaker that her mother would have to move out if she could not eat her  
 25 meals in the dining room. (Whitaker Dec. ¶ 13.)

26          Shortly thereafter, Ms. Whitaker provided a letter to Redwood from Ms. Duncan's  
 27 physician verifying that Ms. Duncan should be permitted to take her meals in her  
 28 apartment due to her physical condition. To date, neither Ms. Duncan nor Ms. Whitaker

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1 has received any response to the physician's letter. (Whitaker Dec. ¶ 12.)

2 In December 2006, Ms. Whitaker also inquired about the move-out notices that  
 3 had been served on some disabled residents. Denise Hall stated that Ms. Duncan was  
 4 not on "the list" of residents who were being asked to move out, but that she would be  
 5 asked to move out "soon," or words to that effect. The managers stated that they  
 6 wanted Redwood to be a retirement home, like it used to be, rather than an "old folks'  
 7 home," or words to that effect. They stated that they were "weeding out" the  
 8 wheelchairs and walkers because they gave Redwood "a bad impression," or words to  
 9 that effect. They added that Ms. Whitaker should start looking for another home for her  
 10 mother, Ruby Duncan. (Whitaker Dec. ¶ 13.)

11 Ms. Whitaker took the advice of the Redwood managers and began looking  
 12 throughout Napa and Sonoma Counties for a new residence for Ms. Duncan. Ms.  
 13 Duncan was aware that she would have to move and became extremely upset. She did  
 14 not want to leave Redwood, which had been her home for more than fifteen years. Ms.  
 15 Whitaker did not want to have to move Ms. Duncan, because she feared the upheaval  
 16 and stress of moving would be very hard on her. (Whitaker Dec. ¶ 14.)

17       **3. Other Evidence of Defendants' Discriminatory Housing  
 18                   Practices and the Likely Hardships on Putative Class  
 19                   Members.**

20 Many other residents of Redwood have witnessed the discriminatory housing  
 21 practices. All have suffered harm as a result of those practices, or are likely to suffer  
 22 harm in the future. Home health care aides who work at Redwood confirm that some of  
 23 their clients were being evicted and that others were living in fear of eviction because  
 24 they were "too disabled." (Valencia Dec. ¶ 4; Declaration of Salve Penales, filed  
 25 concurrently herewith ["Penales Dec."], ¶ 5.)

26 Bill Nye is one such resident. Mr. Nye was 92 years old in April 2007 when  
 27 Redwood managers served one of his daughters, Celestia Amberstone, with a 30-day  
 28 notice to move out. (Declaration of Celestia Amberstone, filed concurrently herewith,

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[“Amberstone Dec.”], ¶¶ 4, 10.) The notice did not allege that Mr. Nye had violated the rental agreement; rather, the notice alleged that Redwood “could no longer meet [his] needs.” (Amberstone Dec. ¶ 10, Exhibit 3.) The attached “incident notes summary” cited infractions such as Mr. Nye’s inability to keep track of time and falling asleep in the dining room. It concluded by stating, “It is for these reasons and many others that Redwood management feels that Bill [Nye] is no longer defined as independent living eligible.” (Amberstone Dec. ¶ 12, Exhibit 3.)

Mr. Nye had a heart condition and was diagnosed with dementia after moving into Redwood. (Amberstone Dec. ¶ 4.) He needed help to take his medication, bathe, and ambulate, so his daughters hired home health care aides who assisted him for several hours every day. (Amberstone Dec. ¶ 5.) Redwood’s 30-day notice and the explanations that accompanied it demonstrate that Redwood took the drastic action of evicting Mr. Nye solely because of these disabilities. Mr. Nye passed away less than one month after moving out of Redwood. (Amberstone Dec. ¶ 16.)

Bernice Thornton is another resident who was ordered to move out as a result of her disabilities. Redwood first served her with an eviction notice in October 2006. (Declaration of Thomas Thornton, filed concurrently herewith [“Thornton Dec.”], ¶ 8.) The letter that accompanied that eviction notice stated that Ms. Thornton’s “needs” could not be met at Redwood, “an independent living community for seniors able to maintain an active lifestyle.” (Thornton Dec. ¶ 8, Exhibit 7.) Ms. Thornton’s son, Thomas Thornton, advocated on behalf of his mother with Redwood managers, and Redwood agreed to rescind the eviction notice. (Thornton Dec. ¶ 9.)

Despite that agreement, however, Mr. Thornton quickly realized that his mother was no longer welcome at Redwood because of her disabilities. First, Mr. Thornton learned of the new Meal Tray Policy. As a result of that policy, Mr. Thornton received a letter from Redwood demanding payment of \$870 in meal tray fees in March 2007. (Thornton Dec. ¶ 10.) Redwood demanded this extra fee even though Ms. Thornton’s meals were included in her rent, and the meal trays were picked up and returned to the

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1 kitchen by Ms. Thornton's private health care aide. (Thornton Dec. ¶¶ 4, 7.) Mr.  
 2 Thornton's explicit request for a reasonable accommodation went unanswered.  
 3 (Thornton Dec. ¶ 11.)

4 Next, in April 2007, Redwood served Mr. Thornton with a new 30-day eviction  
 5 notice for his mother. The attached "resident summary" indicated that Redwood  
 6 believed Ms. Thornton must move out because "she is completely dependent upon  
 7 others for her care and well-being and requires 24 hour care and supervision."  
 8 (Thornton Dec. ¶ 14, Exh. 10.) Ms. Thornton's needs were being met, however, by her  
 9 24 hour health care aide. (Thornton Dec. ¶ 7.) Moreover, Ms. Thornton's son did not  
 10 believe it was in his mother's best interests to move out of Redwood. That belief was  
 11 based at least in part on Ms. Thornton's physician's recommendation: ensure that she  
 12 is in a stable, familiar living environment with opportunities for social interaction.  
 13 (Thornton Dec. ¶¶ 18-19.)

14 After Redwood was served with a letter stating that the 30-day notice was  
 15 improper under the California Civil Code, Redwood served a new, 60-day eviction  
 16 notice ordering Ms. Thornton to move out. As a direct result of that notice, Bernice  
 17 Thornton moved out of Redwood on July 15, 2007. (Thornton Dec. ¶ 16.)

18       **4. Plaintiff Greater Napa Valley Fair Housing Center.**

19 Plaintiff Greater Napa Valley Fair Housing Center, doing business as Fair  
 20 Housing Napa Valley ["FHNV"], is a non-profit agency with a mission to promote the  
 21 eradication of housing discrimination throughout Napa County. It provides counseling,  
 22 investigation, and educational services regarding fair housing to residents and housing  
 23 providers. (Declaration of Kathryn J. Winter, filed concurrently herewith, ["Winter Dec."]  
 24 ¶ 3.)

25 FHNV suffered damages when Redwood committed discriminatory housing  
 26 practices. As a direct result of those discriminatory practices, Nancy Northern and  
 27 Louise Whitaker both lodged complaints with FHNV. At least six other residents of  
 28 Redwood or their next of kin have made similar complaints to FHNV between October

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1 2006 and the present. (Winter Dec. ¶ 7.) FHNV diverted resources from other  
 2 programs and activities, including staff time and financial resources, in order to  
 3 investigate and address the allegations. (Winter Dec. ¶ 8.) FHNV also expects to incur  
 4 costs on future activities devised to counteract the effects of the discrimination on  
 5 FHNV's mission. (Winter Dec. ¶ 9.)

### 6 III. ARGUMENT

#### 7 A. PLAINTIFFS MEET THE REQUIREMENTS FOR GRANTING A 8 PRELIMINARY INJUNCTION.

9 To obtain a preliminary injunction plaintiffs must show either (1) a combination of  
 10 probable success on the merits and the possibility of irreparable injury, or (2) the  
 11 existence of serious questions going to the merits and the balance of hardships tipping  
 12 in plaintiffs' favor. *Warsoldier v. Woodford*, 489 F.3d 989, 993-4 (9<sup>th</sup> Cir. 2005) (quoting  
 13 *Nike, Inc. v. McCarthy*, 379 F.3d 576, 580 (9<sup>th</sup> Cir. 2004)). "These two alternatives  
 14 represent extremes of a single continuum rather than two separate tests. Thus, the  
 15 greater the relative hardship to [plaintiffs], the less probability of success must be  
 16 shown." *Id.* (quoting *Walczak v. EPL Prolong, Inc.* 198 F.3d 725, 731(9th Cir.  
 17 1999)(internal quotations omitted)). When plaintiffs are able to demonstrate such a  
 18 probability of harm, the Court may grant an injunction "even though the questions raised  
 19 are only serious enough to require litigation." See *Briggs v. Sullivan*, 886 F.2d 1132,  
 20 1143 (9<sup>th</sup> Cir. 1989).

21 In the context of a motion for preliminary injunction based on alleged violations of  
 22 the Fair Housing Act, "Irreparable injury may be presumed from the fact of  
 23 discrimination and violation of fair housing statutes." *Gresham v. Windrush Partners,*  
*Ltd.*, 730 F.2d 1417, 1423 (11<sup>th</sup> Cir. 1984); *Silver Sage Partners, Ltd. v. City of Desert*  
*Hot Springs*, 251 F.3d. 814, 826-827 (9<sup>th</sup> Cir. 2001); *Housing Rights Center v. Donald*  
*Sterling Corp.*, 284 F.Supp. 2d. 1129 (C.D. Cal. 2003). The federal fair housing laws  
 24 expressly authorize the issuance of an injunction "if the court finds that a discriminatory  
 25 housing practice has occurred or is about to occur." 42 U.S.C. §3613(c)(1). No  
 26  
 27  
 28

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1 additional showing of injury is required.

2           **1. Plaintiffs are Likely to Succeed on the Merits of Their Claims.**

3           The federal Fair Housing Act is intended to “[e]nsure the removal of artificial,  
 4 arbitrary and unnecessary barriers [in housing] when barriers operate invidiously to  
 5 discriminate on the basis of impermissible characteristics.” *United States v. City of*  
*6 Parma*, 494 F. Supp. 1049, 1053 (N.D. Ohio 1980), *aff’d*, 661 F.2d 562 (6<sup>th</sup> Cir. 1981),  
*7 cert. denied* 465 U.S. 926 (1982); *see also United States v. City of Black Jack*, 508 F.2d  
*8* 1179 (8<sup>th</sup> Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975). The Fair Housing Act reaches  
*9* actions that have a discriminatory effect as well as those that are intentionally  
*10* discriminatory. *E.g. Keith v. Volpe*, 858 F.2d 467, 482-84 (9<sup>th</sup> Cir. 1988) *cert. denied*,  
*11* 493 U.S. 813 (1989); *Pfaff v. HUD*, 88 F.3d 739, 745-46 (9<sup>th</sup> Cir. 1996).

12           In 1988, Congress enacted the Fair Housing Amendments Act (FHAA),  
 13 amending the Fair Housing Act to include people with disabilities among the groups  
 14 protected from discrimination in housing.

15           *The [FHAA] . . . is a clear pronouncement of a national commitment to end the*  
*16 unnecessary exclusion of persons with handicaps from the American*  
*17 mainstream. It repudiates the use of stereotypes and ignorance, and mandates*  
*18 that persons with handicaps be considered as individuals. Generalized*  
*19 perceptions about disabilities and unfounded speculations about threats to safety*  
*20 are specifically rejected as grounds to justify exclusion.*

21 H. Rep. No. 711, 100<sup>th</sup> Cong., 2d Sess. 18 (1988).

22           Here, Redwood’s Management violated the Fair Housing Act by: (1) evicting and  
 23 attempting to evict residents based on conduct, physical limitations, or conditions  
 24 directly relating to their disabilities in violation of 42 U.S.C. § 3604(f)(1); (2) imposing  
 25 illegal “occupancy conditions” on tenancy that discriminate on the basis of disability in  
 26 violation of § 3604(f)(2); and, (3) making discriminatory statements against residents

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1 and prospective residents with disabilities in violation of § 3604(c).<sup>3</sup>

2       a. ***Redwood's Eviction Notices Deny Housing to Residents based***  
   ***on Disability in Violation of the Fair Housing Act.***

3           Under the FHAA, it is unlawful “[t]o discriminate in the sale or rental, or otherwise  
 4 make unavailable or deny,” a dwelling to any buyer or renter on the basis of disability.  
 5 42 U.S.C. § 3604(f)(1). Cases applying the “otherwise make unavailable or deny”  
 6 language under the Fair Housing Act, 42 U.S.C. § 3604(a), which is virtually the same  
 7 language added through the FHAA in section 3604(f)(1) with respect to disability  
 8 discrimination, have construed the phrase broadly to prohibit any practices which have  
 9 the effect of denying a dwelling on prohibited grounds. See, e.g. *United States v.*  
 10 *American Institute of Real Estate Appraisers*, 442 F. Supp. 1072, 1079 (N.D. Ill. 1977),  
 11 *appeal dismissed*, 590 F. 2d 242 (7<sup>th</sup> Cir. 1978).

12           Here, Redwood served multiple eviction notices to tenants whose disabilities  
 13 disqualified them from Redwood’s “Independent” or “Active Living” requirements. Each  
 14 of these notices explicitly state that Redwood “can no longer meet (the resident’s)  
 15 needs,” and all of them include attachments documenting “incidents” which  
 16 demonstrate how the resident, due to conditions or behaviors resulting from disabilities,  
 17 no longer meets Redwood’s “independent” living requirements. (See, e.g., Amberstone  
 18 Dec. ¶¶ 10-12, Exh. 3.) The discriminatory motives for the evictions are also evident in  
 19 nearly every conversation Redwood’s managers had with tenants and their families  
 20 surrounding the eviction notices. (See Whitaker Dec. ¶ 13; Northern Dec. ¶¶ 10, 13;  
 21 Amberstone Dec. ¶ 10.)

22           **October 2006 Eviction Notices.** Redwood served an unknown number of  
 23 eviction letters and 30-day eviction notices in October 2006. Each eviction notice  
 24 included some language describing how the resident being evicted did not meet  
 25 Redwood’s “Independent Living” requirements. For example, in an October 28, 2006,

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26  
 27           <sup>3</sup>Plaintiffs’ complaint includes other allegations, including failure to reasonably  
 28 accommodate, but those allegations are not the subject of this motion.

1 letter from Redwood to Thomas Thornton, which accompanied the 30-day notice  
 2 served on his mother, Bernice Thornton, Redwood management wrote, “[t]his decision  
 3 is entirely based on Bernice’s needs and the health and safety of our facility. As you  
 4 know, the Redwood is an independent living community for seniors able to maintain an  
 5 active lifestyle.” (Thornton Dec. ¶ 8; Exh. 7.)

6 When residents and their families confronted Redwood about the notices,  
 7 Redwood management repeatedly stressed the connection between the evictions and  
 8 behaviors and conditions resulting from disability. For example, when Mr. Thornton  
 9 confronted Redwood manager David Hall about the 30-day notice served on his  
 10 mother, Mr. Hall stated that Ms. Thornton was being asked to move out because “...(1)  
 11 she is incontinent; and (2) on one occasion she momentarily left her apartment half-  
 12 dressed.” (Thornton Dec. ¶ 9.) Both of these behaviors resulted from Ms. Thornton’s  
 13 cognitive and physical disabilities.

14 Mr. Thornton was able to negotiate for the withdrawal of the October 2006 30-  
 15 day eviction notice. Other residents were not as fortunate. Health care aides report  
 16 that Redwood issued other eviction notices during this period, and that residents did  
 17 indeed move out. (Valencia Dec. ¶ 4; Penales Dec. ¶ 5.)

18 **April 2007 Eviction Notices.** Redwood continued its attempts to force out  
 19 residents with disabilities by issuing a second round of eviction notices to residents with  
 20 disabilities in April 2007. Like the first round of notices, these notices attached letters  
 21 detailing Redwood’s stated reasons for the evictions. Examples include the April 5,  
 22 2007 letter from Redwood to Bill Nye, which includes a list of “incidents” relating to Bill’s  
 23 lack of independence, among them the assertion that Bill has “no concept of time” and  
 24 a statement that, “... Bill is no longer independent living eligible.” (Amberstone Dec. ¶;  
 25 Exh. 3.) Mr. Nye moved out in late April 2007 and passed away less than one month  
 26 later. (Amberstone Dec. ¶ 16.)

27 Thomas Thornton’s mother, Bernice Thornton, also received a new 30-day  
 28 notice. The “Resident Summary” attached to the 30-day notice, which purports to

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1 describe the reasons Ms. Thornton is being evicted, leads with the assertion that,  
 2 "Bernice is incapable of providing for her own healthcare and personal needs."  
 3 (Thornton Dec. ¶ 14; Exh. 10.) The second reason provided in the Resident Summary  
 4 is that she "is completely dependent upon others for her care and well-being and  
 5 requires 24 hour care and supervision." (*Id.*) Rather than fight the latest eviction  
 6 notice, Ms. Thornton moved out of Redwood on July 15, 2007. (Thornton Dec. ¶ 16.)

7 Plaintiff FHNV also received complaints from other residents with disabilities who  
 8 received 30-day notices during this period. (Winter Dec. ¶ 7.)

9                   ***b. Redwood's "Active" or "Independent Living"***

10                   ***Requirements and Meal Tray Policy are Illegal***

11                   ***Conditions of Tenancy That Discriminate on the Basis of***  
 12                   ***Disability.***

13 The FHAA makes it unlawful, "[t]o discriminate against any person in the terms,  
 14 conditions, or privileges of sale or rental of a dwelling, or in the provision of services or  
 15 facilities in connection with such dwelling . . ." based on disability. 42 U.S.C. §  
 16 3604(f)(2). Conditions for tenancy that discriminate on the basis of disability are  
 17 unlawful terms or conditions of a rental within the meaning of section 3604(f)(2). See,  
 18 e.g., *Samuelson v. Mid-Atlantic Realty Co., Inc.*, 947 F. Supp. 756, 761 (D. Del. 1996).

19                   **Active or Independent Living Requirements.** Courts have interpreted the  
 20 FHAA's ban on discriminatory terms and conditions to specifically prohibit housing  
 21 providers from requiring tenants to be capable of "independent living." See *Cason v.*  
*Rochester Housing Authority*, 748 F. Supp. 1002, 1008-09 (W.D.N.Y. 1990);  
*Niederhauser v. Independence Square Housing*, 4 Fair Housing - Fair Lending (Aspen  
 22 Law & Bus.) ¶16,305.2-.6 (N.D. Cal. 1998) (attached as Exhibit 5 to the Cristol-Deman  
 23 Dec.); see also *United States v. Forest Dale, Inc.*, 818 F.Supp. 954 (N.D. Tex 1993)(the  
 24 Fair Housing Act prohibits public housing for the elderly from excluding elderly  
 25 applicants with disabilities).

26                   In *Niederhauser*, the management company at a government-funded housing  
 27

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1 complex for seniors and persons with disabilities maintained written occupancy  
 2 conditions requiring that all tenants be able to meet their personal care, financial, and  
 3 other needs independently. See *Niederhauser*, 4 Fair Housing - Fair Lending at  
 4 16,305.6. Despite the fact that the plaintiffs in the case were never denied housing as a  
 5 result of these conditions, the court found that the threat of enforcement of such  
 6 conditions was enough to make them unlawful under the FHAA. *Id.*

7 Defendants explicit oral and written statements and its actions echo the same  
 8 theme: that Redwood is an “independent” living community limited to seniors who are  
 9 “able to maintain an active lifestyle.” Since at least late 2006, Redwood has taken  
 10 every step to ensure that those seniors whose disabilities disqualify them from this  
 11 category know that they are not welcome. These policies include:

12       Redwood’s Print Advertising. In its marketing brochures and print  
 13 advertisements, Redwood tells potential residents to “see how wonderful active,  
 14 independent, retirement can be.” (Cristol-Deman Dec. ¶ 3, Exh. 4.)

15       Redwood’s Rental Agreements. Redwood’s rental agreements specifically  
 16 require that residents represent that they are capable of providing for their health care  
 17 and personal care needs and will agree to “promptly move out” if they cannot provide  
 18 for their own needs. (See Amberstone Dec. ¶ 3, Exh. 1 at page 3, ¶ 9.A and 9.B.) The  
 19 rental agreement gives Redwood management the sole discretion to decide when a  
 20 resident should move out for failure to provide for their own care needs. *Id.* at ¶ 9.B.

21       Oral Statements to Residents and their Relatives. David and Denise Hall,  
 22 Redwood’s former resident managers, have repeatedly stated that Redwood is an  
 23 “independent living” facility. (Valencia Dec. ¶ 5.) Higher authorities from Holiday  
 24 Retirement Corporation have also made statements to the effect that anyone physically  
 25 unable to, for example, use the dining room does “not belong at Redwood.” (Northern  
 26 Dec. ¶ 13.) When family members of residents visited Redwood, David and Denise  
 27 Hall repeatedly made comments reinforcing this policy. For example, Denise Hall  
 28 stated that Redwood was “weeding out” the wheelchairs and walkers because “they

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1 gave Redwood a bad impression." (Whitaker Dec. ¶ 13.)

2        Written Notices. Redwood's written communications with residents have  
 3 included explicit policy statements making housing unavailable to residents with  
 4 disabilities. For example, the opening paragraph of the meal tray policy reminds  
 5 residents to "...please keep in mind that Redwood is a retirement community  
 6 designed for active and independent seniors." See Exhibit 12 to the Whitaker Dec.  
 7 Also, as described above, the documents provided with the eviction notices included  
 8 language describing how the resident being evicted did not meet Redwood's  
 9 "independent" living requirements. See, e.g. the April 5, 2007 letter from Redwood to  
 10 Bill Nye, attached as Exhibit 3 to the Amberstone Dec.

11        All of these policy pronouncements illustrate illegal conditions for tenancy that  
 12 discriminate against residents with disabilities – exactly the kind of policies found to  
 13 violate the Fair Housing Act in *Cason*, 748 F. Supp. at 1002, 1008-09 and  
 14 *Niederhauser*, 4 Fair Housing -Fair Lending at 16,305.2-6.

15        **Discriminatory Meal Tray Policies.** As stated above, any policies or practices,  
 16 that have the effect of discriminating against residents with disabilities, regardless of  
 17 stated intent, violate the FHAA. See, e.g., *American Institute of Real Estate  
 Appraisers*, 442 F. Supp at 1079; see also *U.S. v. California Mobile Home Park  
 Management Co.*, 29 F.3d 1413 (9<sup>th</sup> Cir. 1994)(holding that although management  
 20 company's policy of charging residents a daily fee for long-term guests was facially  
 21 neutral, it had a discriminatory effect on tenant whose daughter's respiratory illness  
 22 required a live-in caregiver). Redwood's Meal Tray Policy has the purpose and effect of  
 23 discriminating against people with disabilities.

24        Redwood's Meal Tray Policy, which took effect on January 1, 2007, explicitly  
 25 discriminates against residents who cannot eat in the dining room because of a  
 26 disability. See Redwood Meal Tray Policy, Whitaker Dec. Exh. 12. The meal tray  
 27 policy permits home delivery of meal trays only to those residents "who are temporarily  
 28 ill or who are rehabilitating and cannot come to the dining room due to their short term

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1 condition where full or near full recovery is expected." For those residents with  
 2 permanent disabilities who do not fall into this "short-term condition" category, Redwood  
 3 charges a fee of \$10.00 per day, beginning on the fourth day trays are delivered to the  
 4 resident. *Id.* The charge applies despite the fact that home health care aides pick up  
 5 the meal trays, take them to residents' apartments, and return them to the kitchen.  
 6 (Valencia Dec. ¶ 6; Penales Dec. ¶ 7.)

7 Moreover, the discriminatory effect of this additional charge is clear: those with  
 8 disabilities who cannot eat in the communal dining room will rack up extraordinary fees  
 9 in a very short period. The comments of Redwood's corporate management company  
 10 when confronted about the effect of the policy on disabilities leave little doubt about the  
 11 discriminatory motive. Tom Ahrens, who identified himself as the Regional Manager for  
 12 Holiday Retirement Corporation stated Redwood is an "independent living facility" and  
 13 that people who cannot eat their meals in the dining room "do not belong at Redwood,"  
 14 or words to that effect. (Northern Dec. ¶ 13.) Mr. Ahrens stated that Redwood was "not  
 15 intended" for people who could not make it to the dining room. *Id.*

16           c.     ***Redwood's Discriminatory Statements Violate the Fair***  
 17           ***Housing Act.***

18           The Fair Housing Act prohibits making, printing, or publishing "any notice,  
 19 statement, or advertisement with respect to the sale or rental of a dwelling that indicates  
 20 any preference, limitation, or discrimination based on . . . handicap . . or an intention to  
 21 make any such preference, limitation or discrimination." 42 U.S.C. § 3604(c). The  
 22 governing regulations interpret this provision to cover "all written or oral notices or  
 23 statements by a person engaged in the sale or rental of a dwelling." 24 C.F.R. §  
 24 100.75. In addition, plaintiffs need not prove that defendants acted with subjective  
 25 intent when making such statements, but rather need only show that defendants'  
 26 language would suggest to discourage an ordinary reader (or listener) that people of a  
 27 protected group are preferred or dispreferred for the housing in questions. See *Llanos*  
 28 *v. Estate of Anthony Coehlo*, 24 F.Supp 2d. 1052, 1057 (E.D. Cal. 1998)(also quoting

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1      *Ragin v. New York Times Co.*, 923 F.2d 995, 999 (2nd Cir. 1991)).

2            In this case, as described above, Redwood management made (and continues  
 3 to make) numerous statements limiting residency to seniors who meet Redwood's  
 4 "active" or "independent living requirements." In its advertising (which describes  
 5 Redwood as "Active Living"), its correspondence with residents and their families, its  
 6 explicit statements accompanying the eviction notices, its meal tray policy, and  
 7 numerous conversations with residents, families, and care givers, Redwood has stated  
 8 repeatedly in countless ways that people whose disabilities disqualify them from status  
 9 as "active" or "independent" living are not welcome. (See, e.g., Northern Dec. ¶ 13;  
 10 Whitaker Dec. ¶ 13.) The sheer number and transparency of these discriminatory  
 11 statements make it impossible for the ordinary listener or reader to interpret them as  
 12 doing anything other than discriminating against residents and prospective residents  
 13 with disabilities.

14            **2. Plaintiffs Also Are Likely to Succeed on State Law Claims.**

15            The California Fair Employment and Housing Act, *Cal. Gov. Code* § 12900 et  
 16 seq., "FEHA," like the FHAA, prohibits discrimination in housing based on disability. See  
 17 *Cal. Govt. Code* § 12955. FEHA is explicitly intended to afford protected classes no  
 18 fewer rights or remedies than the FHAA and its implementing regulations, *Cal. Govt.*  
 19 *Code* § 12955.6, and much of the language of FEHA tracks that of the FHAA verbatim.  
 20 Therefore, defendants' discriminatory evictions and policies, their discriminatory  
 21 statements, as well as its failures to accommodate residents with disabilities, violate  
 22 FEHA.

23            In addition, defendants' conduct violates other provisions of California law that  
 24 provide similar protections against discrimination in housing based on disability. The  
 25 Unruh Civil Rights Act, *Cal. Civil Code* § 51 et seq., generally provides that all persons in  
 26 the State, "no matter what . . . their . . . disability are entitled to full and equal  
 27 accommodations, advantages, facilities, privileges or services in all business  
 28 establishments of every kind whatsoever." Rental housing providers such as the

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1 defendants are clearly within the meaning of business establishment under the Unruh  
 2 Act. See Marina Point, Ltd. v. Wolfson, 30 Cal.3d 721, 730-31 (1982).

3 Finally, defendants' conduct violates California Civil Code § 54 et seq., which  
 4 provides, at Section 54.1(b)(1), that "[i]ndividuals with disabilities shall be entitled to full  
 5 and equal access, as other members of the general public, to all housing  
 6 accommodations offered for rent, lease, or compensation in this state, subject to the  
 7 conditions and limitations established by law, or state or federal regulation, and  
 8 applicable alike to all persons."

9           **B. Plaintiffs Suffer Irreparable Injury that Continues to Mount, and the  
 10 Balance of Hardships Tilts in Their Favor.**

11 As shown above, when a plaintiff alleges that the defendants have engaged in a  
 12 prohibited discriminatory practice, all that is needed to support an injunction is proof  
 13 that the practice exists. *Topic v. Circle Realty Co.*, 377 F.Supp. 111, 114 (C.D. Cal.  
 14 1974), *rev'd. on other grounds*, 532 F.2d 1273 (9<sup>th</sup> Cir. 1975), cert. denied, 429 U.S.  
 15 859 (1976); see also *Association for the Advancement of the Mentally Handicapped v.*  
 16 *City of Elizabeth*, 876 F.Supp. 614, 624 (D.N.J. 1994). For the purposes of preliminary  
 17 injunctive relief, courts presume irreparable injury by the very fact of discrimination and  
 18 violations of the fair housing statutes. *E.g Gresham v. Windrush Partners, Ltd.*, 730  
 19 F.2d at 1422-23.

20 Nonetheless, plaintiffs' declarations are rife with examples of hardships directly  
 21 resulting from defendants' pattern of discriminatory conduct. As Nancy Northern  
 22 describes in her declaration, her mother Eva Northern was anxious and depressed as a  
 23 result of being forced to relocate. (See Northern Dec. ¶¶ 15,18,19.) Eva Northern "was  
 24 very upset when we arrived at Aegis [her new residence] and initially refused to get out  
 25 of the car." (*Id.* ¶ 18.) After she moved to Aegis, Eva Northern's mental condition  
 26 rapidly declined. Previously, she had many days when she was mentally lucid and  
 27 clear, and an occasional day when she seemed more confused and disoriented. After  
 28 the move, confusion and disorientation became her new norm. She continued to cry

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1 frequently about her move from Redwood." (*Id.* ¶ 19.) Eva Northern's condition  
 2 continued to worsen due to the trauma of the move and her anger at Redwood's  
 3 management. As Nancy Northern states in her declaration, "I believe that the stress of  
 4 the situation at Redwood and her move from Redwood hastened my mother's mental  
 5 and physical decline." *Id.*

6 Louise Whitaker describes how, since her mother Ruby Duncan first became  
 7 aware of the eviction notices and Redwood's Meal Tray Policy, she "lived in fear of  
 8 eviction. She was afraid to leave her apartment and worried that, if she did go into the  
 9 common areas, the managers would give her a notice to vacate due to her visible  
 10 disabilities." (Whitaker Dec. ¶ 14.) Ms. Duncan passed away just as this lawsuit was  
 11 being prepared for filing. (Whitaker Dec. ¶ 4.)

12 Another former resident of Redwood, Bill Nye, passed away less than a month  
 13 after he was forced to move out of Redwood. (Amberstone Dec. ¶ 16.) Mr. Nye did not  
 14 want to leave Redwood and his trusted home health care aides. (Amberstone Dec. ¶  
 15 15.) His daughter disagreed with Redwood's decision to evict Mr. Nye and had to  
 16 quickly find another residence for him after receiving their 30-day notice. (Amberstone  
 17 Dec. ¶¶ 13, 14.)

18 Finally, Fair Housing of Napa Valley has incurred and will continue to incur  
 19 damages if Redwood's discriminatory policies are not halted immediately. Their  
 20 mission is to eradicate housing discrimination throughout the Napa Valley. (Winter  
 21 Dec. ¶ 3.) That mission is injured every day that Redwood is permitted to maintain and  
 22 enforce its discriminatory policies – especially since those policies are reflected in  
 23 marketing documents seen by the general public. See, e.g., *Havens Realty Corp. v.*  
 24 *Coleman*, 455 U.S. 363, 379 (1982) (where discriminatory housing practices impair  
 25 organization's ability to carry out its mission, "there can be no question that the  
 26 organization has suffered injury in fact"). Moreover, individuals who are affected by  
 27 Redwood's discriminatory policies in the future may file complaints with FHNV, as the  
 28 plaintiffs in this case did, injuring FHNV by diverting its limited resources away from

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1 important educational campaigns and other efforts. (Winter Dec. ¶¶ 5-7.)

2 The injuries to plaintiffs and putative class members cannot seriously be  
 3 disputed. On the other side of the scale, it is hard to imagine any harm defendants will  
 4 face if they must withdraw their discriminatory policies and eviction notices and refrain  
 5 from making discriminatory statements. Plaintiffs are not asking the Court to order  
 6 defendants to incur any financial costs or take any action that would place staff or  
 7 residents in harm's way. Rather, plaintiffs ask that defendants conform their policies  
 8 and practices to the requirements of the fair housing laws in order to prevent future  
 9 injury to FHNV and others.

#### 10 IV. CONCLUSION

11 Defendants' blatant attempts to weed out residents with disabilities from their  
 12 luxury apartment building in order to further its "active" or "independent" living policies  
 13 violate both federal and state fair housing laws and, if allowed to continue, will cause  
 14 irreparable injury to countless seniors with disabilities, many of whom may have no  
 15 other place to go. For the reasons stated above, plaintiffs respectfully request that the  
 16 Court issue a preliminary injunction to halt defendants' discriminatory policies.

17 Dated: August 2, 2007.

18 Respectfully submitted,

19 BRANCART & BRANCART

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 22 Liza Cristol-Deman  
 Attorneys for Plaintiffs

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## **PROOF OF SERVICE**

I am over the age of 18 and am not a party to the within action. My business address is 8205 Pescadero Road, Loma Mar, California 94021.

On August 2, 2007, I served a true and correct copy of the following document(s):

**(1) NOTICE OF MOTION AND MOTION FOR ISSUANCE OF PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION; (2) DECLARATIONS OF CELESTIA AMBERSTONE, LIZA CRISTOL-DEMAN, NANCY NORTHERN, SALVE PENALES, THOMAS W. THORNTON, PRISCILLA VALENCIA, MAE LOUISE WHITAKER, AND KATHRYN J. WINTER IN SUPPORT OF PLAINTIFFS' MOTION FOR ISSUANCE OF PRELIMINARY INJUNCTION; EXHIBITS; (3) [PROPOSED] ORDER ISSUING PRELIMINARY INJUNCTION**

upon the following person(s):

Defendants' Agent for Service of Process, CT Corporation System, 818 West Seventh Street, 2nd Floor, Los Angeles, CA 90017, (by mail only); and,

Kurt A. Franklin, Hanson, Bridgett, Marcus, Vlahos, Rudy LLP, 425 Market Street, 26th Floor, San Francisco, CA 94105 (by mail and electronic mail)

	<b>BY HAND DELIVERY:</b> By causing such document(s) to be delivered by hand to the above person(s) at the address(es) set forth above.
xx	<b>BY MAIL:</b> By placing a copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States mail at Loma Mar, California, addressed as set forth above.
	<b>BY THIRD-PARTY COMMERCIAL CARRIER (OVERNIGHT DELIVERY):</b> By delivering a copy thereof to a third-party commercial carrier, addressed as set forth above, for delivery on the next business day.
xx	<b>BY ELECTRONIC MAIL:</b> By transmitting the above document(s) to the email address of the person designated above, or by electronically filing the documents on the Court's ECF system.
	<b>BY FACSIMILE:</b> By transmitting the above document(s) to the facsimile number(s) of the addressee(s) designated above.

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1 I certify that I am employed in the office of a member of the bar of this court at  
2 whose direction the service was made.

3 Executed on August 2, 2007, Loma Mar, California.

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